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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 TONY MABRY,) Civil No. 08-CV-965-BEN
12 Petitioner,)
13 v.) **ORDER DENYING APPLICATION**
14 L.E. SCRIBNER, WARDEN,) **FOR CERTIFICATE OF**
15 Respondent.) **APPEALABILITY**
16 _____)

17 On November 21, 2008, this Court denied Petitioner's Petition for Writ of Habeas Corpus
18 brought pursuant to 28 U.S.C. §2254. Petitioner has filed a Notice of Appeal.

19 A certificate of appealability is authorized "if the applicant has made a substantial
20 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To meet this standard,
21 Petitioner must show that: (1) the issues are debatable among jurists of reason; or (2) that a court
22 could resolve the issues in a different manner; or (3) that the questions are adequate to deserve
23 encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *Lambright*
24 *v. Stewart*, 220 F.3d 1022, 1024-25 (9th Cir. 2000), *citing Slack v. Mc Daniel*, 529 U.S. 473
25 (2000), and *Barefoot v. Estelle*, 463 U.S. 880 (1983). Petitioner does not have to show "that he
26 should prevail on the merits. He has already failed in that endeavor." *Lambright*, 220 F.3d at
27 1025, *citing Barefoot*, 463 U.S. at 893 n. 4. Based on this authority, the Court **DENIES** a
28 certificate of appealability as to all of Petitioner's claims.

1 Petitioner argues that he is entitled to habeas relief because the state department of
2 corrections has miscalculated his sentence and parole date. Three bars to habeas relief prevent
3 Petitioner's claim from going forward: (1) the one-year statute of limitations (28 U.S.C. § 2244(d)(1));
4 (2) the exhaustion requirement (28 U.S.C. § 2254(b)(1)); and (3) the bar for successive petitions (28
5 U.S.C. § 2244(b)(1)).

6 This Court has fully reviewed the legal issues raised by Petitioner and concludes that the
7 claims are not debatable among reasonable jurists and do not deserve further encouragement.

8 Based on the foregoing, the Court hereby DENIES Petitioner's application for certificate
9 of appealability.

10 **IT IS SO ORDERED.**

11 Dated: December 1, 2008



ROGER T. BENITEZ
UNITED STATES DISTRICT JUDGE